1900-035 Chancery Causes: Henry Nicoll vs. W.F. Hobbs & Lee Co

Russell, Jesser, Witt, Sprinkel

1 Plat

EA-Contract Dispute
T-Property

NO.I.

To the Hon.H.A.Skeen,Judge of the Circuit Court for Lee County,

Your Crator,Henry Nicoll,humbly complaining shewth unto the court:

That on the I6th day of December I894.he purchased from M.C.Parsons,all of a certain large tract of land supposed to contain about II65 acres,situate in the said county of Lee,on what is known as the Elk Knob,and known as the Elk Knob Farm:

The same being described,not by metes and bounds,but as being all the land on and adjoining said Elk Knob and in the possesion at that time of the said M.C.Parsons,that could be included in one boundary;and to your Orator the said M.C.Parsons executed a title bond or contract, which bond or contract was duly recorded in the Clerks Office of ~~[illegible]~~ County Court of said County in deed book No,3I.P.I77.

At the time of the purchase of said land by your Orator,the legal tittle therof was in the heirs of one M.D.Richmond,(then deceased)and before the same could be extracted from said heirs the said ~~[illegible]~~ ~~the said~~ M.C.Parsons died.So the adminnistrators of the estate of M.C.Parsons,to-wit J.C.Jessee and H.J.Russell,brought suit on the Chancery side of the Circuit Court for said County against the heirs of M.D.Richmond,under the style of J.C.Jessee and H.J.Russell Admrs etc, VS.Henry Nicoll et-al,for the purpose of extracting the said title from the heirs of the said M.D.Richmond;and by decree of said Court entered in said cause on the I5th day of June I898.C.T.Duncan, was appointed a special commissioner of said Court to make a deed for said land,transfering the tittle thereto from the said Richmond heirs to your Orator.And persuant to the terms of said decree,the said C.T. Duncan,on the I5th day of June I898,executed to your Crator a deed for said lands,a copy of which deed is herewith filed,Marked "A"and prayed to be read as part of this bill:

But in the life time of the said M.C.Parsons,he the said Parsons had sold to one W.F.Hobbs a small parcel of said tract of land,so your Crator has been informed,supposed to contain 2I or 22 acres.Which said

sale was evidenced by a tittle bond,and the bounds of said parcel of land so sold the said W.F.Hobbs,was not then surveyed,but indicated by stakes and blases made on the timber,which said parcel of land the said W.F.Hobbs, afterwards,to-wit on the_____day of_____I8 , sold and conveyed ,so your Orator is informed to H.J.Russell, andJ.C. Jessee,who in turn conveyed the same to one J.F.Witt,or Ira G.Sprinkle, or both of them jointly,so your Orator is informed.

About the time however that the said conveyance was made to the said Witt and Sprinkle,the said J.C.Jessee,H.J.Russell,J.F.Witt, and Ira G.Sprinkel,and your Orator met to gather on or near said parcel of land to locate and fix the bounds thereof,at which meeting your Orator was shown certain blased or marked timber which was represented to him to be the bounds of said land sold to the said W.F.Hobbs,by the said Parsons,and your Orator not knowing then that the said marked timber so shown him was not the bounds established by said Parsons with the said Hobbs,your Orator agreed verbally that the same should constitute the true boundary line.But since then your Orator has investigated the matter thoroughly and he has discovered that the boundaries shown your Orator by the said Jessee,Russelll,Witt,and Sprinkle--had been made by them, and not by the said M.C.Parsons,and that the boundary of land included in the bounds so shown your Orator contained more than double the amount of land actually sold by the said Parsons to the aid W.F. Hobbs,

So your Orator having discovered or ascertained the bounds actually established by the said M.C.Parsons,and W.F.Hobbs,he had the same together with the boundary claimed by the said Jessee,Russell,Witt,and Sprinkle,surveyed and plotted by L.M.Carmichel ,the County Surveyor of said County of Lee,a copy of which plot and survey with the metes and bounds of both ~~the~~ one tract actually sold to the said Hobbs, and the one claimed to have been sold him,is herewith filed marked Exhibit "B",---- and prayed to be read as a part of this bill.

The part of said land represented by the colored part of said plot containing 25¾ acres is the land actually sold to said Hobbs, and to which the said Jessee, Russell, Witt, Sprinkel and Hobbs have a right, the land represented by the uncolored portion of said plot, Beginning at (C¹) a stake and cedar, thence S 67 E 12¾ poles, N 81 E 21 poles S 69 E 20 poles poles to (C) a spotted oak ~~[illegible]~~ ~~[illegible]~~ thence S 14 E 64 poles to (D) double oak marked with knife as a corner tree, and on top of a ~~[illegible]~~ spur, thence S 60 W 90 Poles to (A) a double chinquapin ~~oak~~ the beginning of tract actually sold said Hobbs, thenc N 55E 60 poles to (D²) a double pin oak stump, tree cut down, thenc N 35 W 86 poles to (C²) the beginning, is the land unjustly claimed by the said Jessee, Russell, Witt, and Sprinkel from your Crator, or a part of the land sold by M.C.Parsons to the said W.F.Hobbs, But your Crator avers and charges that the tract of parcel of land last aforesaid lies within, and is a part of the boundary of the land which he purchased from M.C.Parsons, aforesaid, and is justly entittled to the quiet and peaceable possesion of the ~~[illegible]~~ same.

Now your Crator further avers that sometime after the said Russell and Jessee purchased the said W .F.Hobbs, land, the said H.J.Russell, died Intestate, leaving a widow Eva Russell, and four children, Bernice Russell, Ealtheria Russell, Bernard Russell and Pearl D. ~~Russell~~ Russell, his only heirs.

Your Crator avers that he is as yet in the possesion of the said disputed tract of land, but he understands that the said J.F.Witt, Ira G. Sprinkel, J.C.Jessee, and the said heirs, are all claming to have tittle to said ~~doubted~~ disputed lands.

Your Crator states and charges that they, the said Jessee, Witt, , Sprinkel Hobbs, and said Russell ~~said~~ heirs have no actual possesion of said disputed lands, but that they have cut timber thereon, and other trespasses committed thereon, nor have they exercised any of the other acts of oenership ~~[illegible]~~

and possesion.Your Orator is now and has been in continuous possesion of said disputed lands for a number of years.

Your Orator cannot bring an action of ejectment against the said parties to settel his claim at law,but his only remedy is in a Court of Equity to have their said illegal claim to said disputed strip cancelled and declared null and void .The same is a cloud upon your Orators title to said land,which is the object of this bill to remove.

Wherefore being without remedy save in a Court of Equity the prayer of your Orator is that the said J.C.Jessee W.F.Hobbs,J.F.Witt,Ira G. Sprinkel,Eva Russell,Bernice Russell, Catherine Russell and Bernard Russell, Pearl D. Russell be made parties defendant to this bill,and be required to answer the same,but not upon oath,the oath being herby waived,that a guardian ad-litem be appointed to defend the interest of the aid Bernice, Catherine, Bernard and Pearl D. Russell,who are infants under the age of twenty one years,that proper process issue,and all proper orders be made ,that upon hearing hereof,your honor will decree that the claims of the said defendants or either of them to the said disputed parcel of land,be declared null and void;that the same be ressinded cancelled and set aside and your Orator be made stable in his title thereto and quieted in the possesion thereof,and that all such other futher and general releif be granted and given your Orator as in the premises is just and right and your Orator will ever pray, etc.

J.C. Hoch Esq

Pltffs Costs

Clerk	5.54
Tax	1.50
Shff	4.50
atty	15.00
G A L	5.00
Co Clk	25
	$31.79

Henry Nicoll's
vs. Bill in Cha.
W P Hobbs et al

1900 2nd May Rules Bill filed S Pa & ruled D. N

" 1st June Rules taken the last Monday in may D. N. confirmed & cause set for hearing

June Term 1900 Decree final See Chey O.B. No 6 Page 396

Henry Nicoll,
VS.) In Chancery.
W.F.Hobbs,et-al)

The joint and separate answer of Bernice, Catherine, Bernard & Pearl D. Russell.

infants under the age of twenty one years by H.O.Ballou,their guardian ad-litem,assigned to defend them in this suit,to a bill of complaint exhibited against them and others,in the ## Circuit Court for the County of Lee by Henry Nicoll.

The respondents reserving to themselves the benefit of all just exceptions to said bill,for answer thereto,or to so ### much thereof as they are advised that is material they should answer,by their said guardian ad-litem answer and say \ That they are infants of tender years,and by reason of their infancy,are incapable of understanding,or of taking care of # their rights and interests.

They therefore,by their said guardian commend themselves and their rights and interests to the protection of the Court, and pray that no decree may be pronounced which will tend to their prejudice.

And having fully answered,the said respondents pray to be hence dismissed with their reasonable costs in this behalf expended,and they will ever pray,etc.

H.O.Ballou

Guardian ad-litem for

Bernie, Catherine Bernard, Pearl D. Russell,

Henry Nicoll

vs. { Answer of infant defts by Guardian ad-litem

W. F. Hibbs, et. al.

Henry Nicoll Plff
vs
W. F. Hobbs et al Defts } In Chancery.

Upon motion H. O. Ballou is appointed guardian ad litem for Bernice Russell Catherine Russell Bernard Russell and Pearl D. Russell, the infant defendants in this cause, and upon like motion leave is granted to the said H. O. Ballou to file the answer of the said infants by their said guardian ad litem, which is accordingly done, and this cause coming on this the 8 day of June 1900, to be heard upon the plaintiffs bill of complaint and exhibits filed therewith, the answer of the said infants by their said guardian ad litem, and was taken pro confesso by counsel and it appearing to the court that all the defendants have been duly summoned, by personal service of process, and all except said infants by their said guardian ad litem, having failed to appear, to plead, answer or demur the bill is taken as confessed as to them, and it is adjudged, ordered, and decreed that the plaintiff be quieted in the title and possession of the

land in dispute as described in the bill and proceedings, ~~and~~ but more particularly described in plaintiffs exhibit "B" filed with his bill of complaint: Beginning at (C^2) a stake and cedar, thence S 67 E 12¾ poles, N 81 E 21 poles, S 79 E 8 poles, S 69 E 20 poles, to (C) a spotted oak, thence S 14 E 64 poles to (D) a double oak marked with a knife as a corner tree and on top of a spur, thence S 60 W 90 poles to (A) a double chinquapin oak, the beginning of the tract actually sold said Hobbs, thence N 55 E 60 poles to (D^2) a double pin oak stump, (tree cut down), thence N 35 W 86 poles to (C^2) the Beginning, containing 21¼ acres more or less, and that he hold said land by the title firm and stable, and free from any claim, demand or interference of the defendants in this cause, or any of them, and all conveyances of of said land, made by the defendants herein and in the bill and proceedings mentioned adverse to the tittle of the plaintiff, be and the same are hereby declared to be null and of no effect, and are to be cancelled and rescinded, so far as they effect the said land in dispute, and that the said plaintiff recover his costs in

this cause expended, from the defendants, and a copy of this decree shall be delivered to the clerk of the Lee county Court - to be recorded in the book in which deeds are recorded, and to be indexed as though it was a deed from the defendants herein, to the plaintiff. And it is ordered that this cause be stricken from the docket.

Henry Nicoll

vs } Decree

W. H. Habbs et al

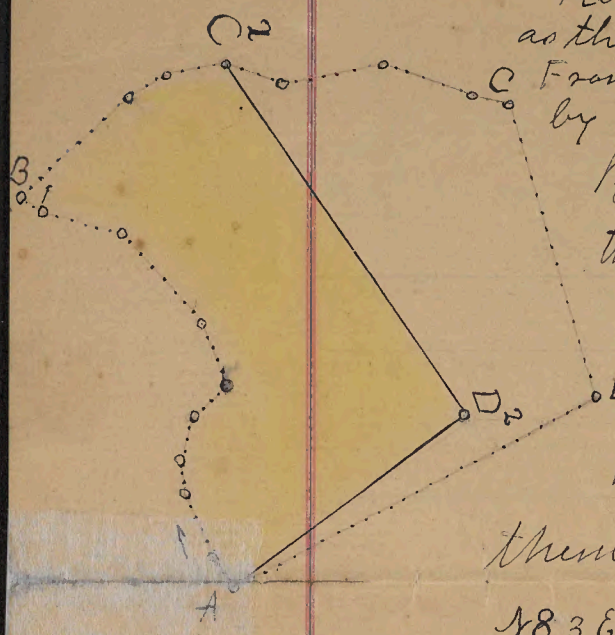
Entered on C. O. B. No 6

fo 396.

Enter

H. A. W. Shum

6/8/1900



(1)

Metes & bounds of the lands claimed by L. Spinks as the lands agreed upon by parties interested as the France Hobbs tract sold by Cecil Parsons - indicated by black dotted line of plat and lettered A B C D

Beginning at (A) a double chinquapin-oak thence with a fence N 32W 7 poles N 23W 14 pls N 5°W 6 po. N 18½E 10 po N 5½E 9½ po N 21W 14 po N 35¼W 26 po to two white oaks N 17W 16 po N 5°7 W 6 poles to (B) a stake, Cedar & Two post oaks thence with another fence N 54E 30 po N 64½E 10 po N 83E 12 po S 67 E 12¾ po N 81E 21 po S 69E 20 po S 79E 8 poles to (C) a Spotted oak thence S 14E 64 poles to (D) a double oak marked with knife as a corner tree and on top of a Spur thence S 60W 90 poles to the beginning Containing 47 acres -

(2)

Metes & bounds of the land claimed by H. Neall as said France Hobbs tract. Indicated by the Colored Spot within the foregoing named plat and lettered A B C^2 D^2. Beginning at (A) a double Chinkapin oak thence with a fence N 32W 7 poles N 23W 14 po. N 5°W 6 po N 18½E 10 po N 5½E 9½ po N 21W 14 po N 35¼W 26 po to Two white oaks N 17W 16 po N 5°7W 6 po to (B) a stake, Cedar & Two post oaks thence with another fence N 54E 30 po N 64½E 10 po N 83E 12 po to (C^2) a stake & Cedar thence leaving said fence S 35E 86 poles to (D^2) a double pin oak stump (tree cut down) and on top of a spur (This line passes over a sugar tree stump at (X) - 52 poles from (C^2), said stump stands about 2 poles south of a spring. Thence from said double pin oak S 55°W 60 po to the beginning Containing 2 5¾ Acres

Surveyed Feb 1900 L. M. Carmichael

Bulis & Wound
Frances Hollis
From
Cecil Parson
& Claimed

Exhibit "B"

1- Title bond W. C. Parsons & W. F. Hobbs - date — Bond lost for 21 or 22 acres (1) They marked out the corner lines - Jas & Rob Bush & can show the corner Hobbs is now back in the county showed Vicars the lines as claimed by Vicars -

2- Title Bond from W. F. Hobbs to Reuben Vicars - They perhaps have this (Sec) date — about $250 - all pd for same land -

3. Title Bond - Sept - 1895 R. & J. G Dan G. Spinks - (we have a copy)

4- Title Bond - Such a bond was made by R & J. to J. F. Britt & assigned to D. G. Spinks by Britt -

5- Title Bond - Sept 1896 - D. G. Spinks to John Collins for same land reserved life possession to D. G. Spinks (we have original — (Collins not a party to suit) Spinks has the actual possession of the land & is plowing it this season (1901) one-half of it is cleared

In the Vicars suit all parties were served & Spinks & Jones came to Jonesville & found the suit not filed in Rule day & Spinks asked Jones if (45.) should

Ann Mack + J. Dail no that he (J.) wanted employ counsel + defend the suit - (+ S paid no more attention to it -
Mitt says R. + J. undertook to defend it the subject on R. + J. -
Jesse says that Sprinkle was to attend it the subject on S. to Dodson

Withdrawal v. Nicoll

What does Jessee say.

2nd May Rules 1900.

22 G. 769. Bill Review always to final decree.

26 G 411. Petition Decree, interlocutory

See 3435 Code, Bill of Review only filed to final decree & in one year.

See cases cited here.

93 Va 696. Rehearing, on account of Surprise & agreement &c.

83 V. 141. Petition when. B. Review when.

Bart Chy Pr. page 339. Case in point not reported.

On the Rule day, Shrinkle & Jessee came to town & Clerk informed them bill not filed & Shrinkle asked Jessee if he must come back & Jessee said no, he would defend &c. Jessee went to Review & did not defend & decree went by default.

Jany 30th 1901.

Ira L Sprinkle

Memo of
Authorities

Know all Men by these presents that we J.C. Jessee and Harry J. Russell are bound unto Ira G. Sprinkle, in the just and full Sum of Three hundred dollars to which payment we bind ourselves jointly and severally firmly by these presents

The Conditions of the above obligation are such that Whereas the Said J.C. Jessee & Harry J. Russell have this day Sold unto the Said Ira G. Sprinkle a Certain tract or parcel of Land lying and being in the County of Lee and State of Va. and bounded as follows To wit Beginning at a double Spotted Oak and double Chinquapin oak on the line between Ira G. Sprinkle and M.C. Parsons (dec'd) Thence in a North Eastward Course (being a Strait line) to a double chinquapin oak and Small Hornbeam in a flat near the top of ridge, Thence in a Northward Course across a hollow passing the falling rock to a Cedar and bearing Chinquapin oak near a fence And with Said fence, and with Said fence Northwestwardly to the line between Ira G. Sprinkle And M.C. Parsons near a chinquapin oak and Small Cedar, and with Said line Southeastwardly to the beginning.

Now if the Said J.C. Jessee and Harry J. Russell Shall Make or Cause to be Made a good and Sufficient deed to Said land with General Warranty then this obligation to be Null & Void Otherwise to remain in full force and Virtue.

Witness our Signatures and Seals

Sept. 1895

Seal

Seal

Jesse T Russell

Is Title Bond

Ira G. Sprinkle

Know all Men by these presents that I John Collier of the County of Lee and State of Virginia am bound unto Ira G. Sprinkle in the sum of four hundred dollars Lawfull Money of the united States to which payment I bind myself heirs executors and administrators firmly by by these presents,

The Conditions of the above obligation is such that Whereas the said Ira G. Sprinkle has this day sold to the said Collier a Certain tract or parcel of Land lying in the County of Lee and State of Virginia and Silvatic near the Elk Knob and bounded as follows to wit, Beginning at a double Spotted oak and double pin oak on the line between Ira G. Sprinkle and M. C. Parson dec'd, thence in a northeastward Course a Strait line to a pin oak and Small hornbeam in a flat near the top of a ridge, thence in a Northwardly Course Crossing a hollow and passing the falling rock to a pin oak near a fence, and with said fence Northwestwardly to the line between Ira G. Sprinkle and M. C. Parsons near a pin oak and Small Cedar and with said line Southwardly to the begining. Now if

the said Ira Sprinkle shall make or cause to be made a good and suffecent title to said land then this obligation to be null and void otherwise to remain in full force and virtue

Witness the following Signatures and seals this Sept. 1896

It is understood and agreed that the said Ira G. Sprinkle is to retain possession and have the use of said lands during Natural life and is to use such care of the lands as not to injure the same by too frequent cultivation in Corn

Ira G. his X mark Sprinkle (Seal)

Witness.
W.S. Hurst

Ira. G. Sprinkle

To } Title Bond

B

John Collier.